O'HARE PARNAGIAN LLP Robert A. O'Hare Jr. (RO 6644) Andrew C. Levitt (AL 8183) 82 Wall Street, Suite 300 New York, NY 10005 212-425-1401 212-425-1421 (f)

Attorneys for Defendants

Caprius, Inc. and MCM Environmental Technologies, Inc.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

----- X GOLDSTAR MEDICAL CORP.,

Plaintiff,

: Index no. 07 CV 11269

- against -

: ECF Case

CAPRIUS, INC. and MCM ENVIRONMENTAL TECHNOLOGIES, INC.,

Defendants.

DECLARATION OF JONATHAN JOELS IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

I, JONATHAN JOELS, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

- 1. I am the Chief Financial Officer of each of the defendants Caprius, Inc. ("Caprius") and MCM Environmental Technologies, Inc. ("MCM"; together "Defendants").
- 2. I submit this declaration in support of Defendant's motion to dismiss the complaint on the grounds that the amount in controversy does not meet the \$75,000 jurisdictional threshold and that Caprius should not be a party to this action.

- 3. In December 2002, Caprius acquired 57% of MCM which was engaged in the medical waste disposal business through the development and sale of the SteriMed systems. Since the acquisition, all of the medical waste and SteriMed business has continued to be operated through MCM, not through Caprius.
- 4. Caprius has not entered into any agreement with plaintiff Goldstar Medical Corp. ("Goldstar"). In fact, the agreements that are the subject of this action are between Goldstar and MCM, not Caprius.
- 5. On or about November 17, 2003, MCM executed a letter agreement with Goldstar (the "2003 Letter Agreement"). A copy of the 2003 Letter Agreement is attached as exhibit A to the Complaint.
 - 6. The 2003 Letter Agreement provides in relevant part:

In the event that MCM enters into a commercial agreement with any entity that is a direct result of an introduction or sales effort made by Goldstar, provided that it is a party previously approved by MCM and with whom MCM has had no previous contact, MCM agrees to pay Goldstar a sales commission based upon net sales receipts to MCM for units sold or placed on rental . . .

- 7. The Complaint alleges that on or about November 17, 2005, MCM and Goldstar purportedly "re-affirmed and enhanced" the 2003 Letter Agreement with a second letter dated November 17, 2005 (the "2005 Letter"). A copy of the 2005 Letter is attached as exhibit B to the Complaint.
- 8. The 2005 Letter purports to change the percentage payable to Goldstar under the 2003 Letter Agreement and provides in relevant part:
 - ... MCM will pay Goldstar a commission of 10% on all sales made to either DaVita or the old Gambro accounts which are now DaVita clinics.

- 9. The Complaint alleges that Goldstar generated sales and rentals for the DaVita account and that the letter agreements were breached through a failure to "pay commission [sic] on sales and rentals generated by [Goldstar] as promised. (Complaint ¶ 52.)
- 10. Since November 17, 2003 (the date of the 2003 Letter Agreement), direct gross sales to DaVita by MCM have totaled \$132,669. Copies of the relevant documents associated with these sales are attached hereto at Exhibit 1.
- 11. Since the date of execution of the 2003 Letter Agreement, Goldstar has invoiced MCM, not Caprius, for commissions due in an amount of \$10,000, as per the Goldstar invoice #013107, dated January 31, 2007. A copy of the Goldstar invoice is attached hereto at Exhibit 2.
- 12. In addition, upon information and belief, DaVita has pending lease agreements with a third-party purchaser of MCM equipment. The sales to the third-party purchaser total \$342,000. An excel spreadsheet setting forth both direct sales to DaVita and the sales to the third-party purchaser in the total of \$474,669 is attached hereto as Exhibit 3.
- 13. Accordingly, if the Court were to assume (for purposes of this motion only) that Goldstar is entitled to a commission on the direct and indirect sales involving DaVita totaling \$474,669 -- based on Goldstar's ability to prove that the sales were a "direct result of a sales effort or introduction" by Goldstar -- and that the commission rate was 10%, Goldstar's total claim for damages would be less than \$47,500 well below the \$75,000 jurisdictional threshold.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 29, 2008.

/s/ Jonathan Joels
Jonathan Joels

Exhibit 1



Environmental Technologies, Inc. One Parker Plaza, Fort Lee, NJ 07024 Phone: (201) 242-1222 / Fax: (201) 592-0392

INVOICE

INVOICE CUSTOMER NO INVOICE DATE 001207 10000 Jan 12, 2006

- S DaVita Inc.
- i. Attn: Dave Clark
- ^D 5200 Virginia Way
- T Brentwood, TN 37027

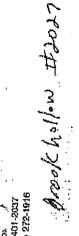
- S DaVita Inc
- 1 1720 West Avenue North
- P Suite 101
- T Crossville, TN 38555
- ø

I Jul 21, 2005 AL Day	se order ship via e Clark 6/22 Delivery		F.O.B. Ridgefield, NJ	TER	TERMS N30	
PLACED BY Donna Woody	SHIPPED DATE Jan 12, 2006	LOCATION ID 001	salesperson Karen Albretsen	TÉRÍ	RITORY TN	
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TRACKING NUMBER		*** :		INVOICE NO.	\$25,759.00 USD	
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Telephone (253) 272-1916 Davito - P.O. Do. Tapome, WA 99401-2037 or I - C E O



ABOVE NUMBER MUST APPEAR ON ALL PACKING LISTS, PACKAGES, INVOICES, CREDIT MEMOS OR OTHER CORRESPONDENCE.

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REGIONAL DIRECTOR

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REGIONAL DIRECTOR

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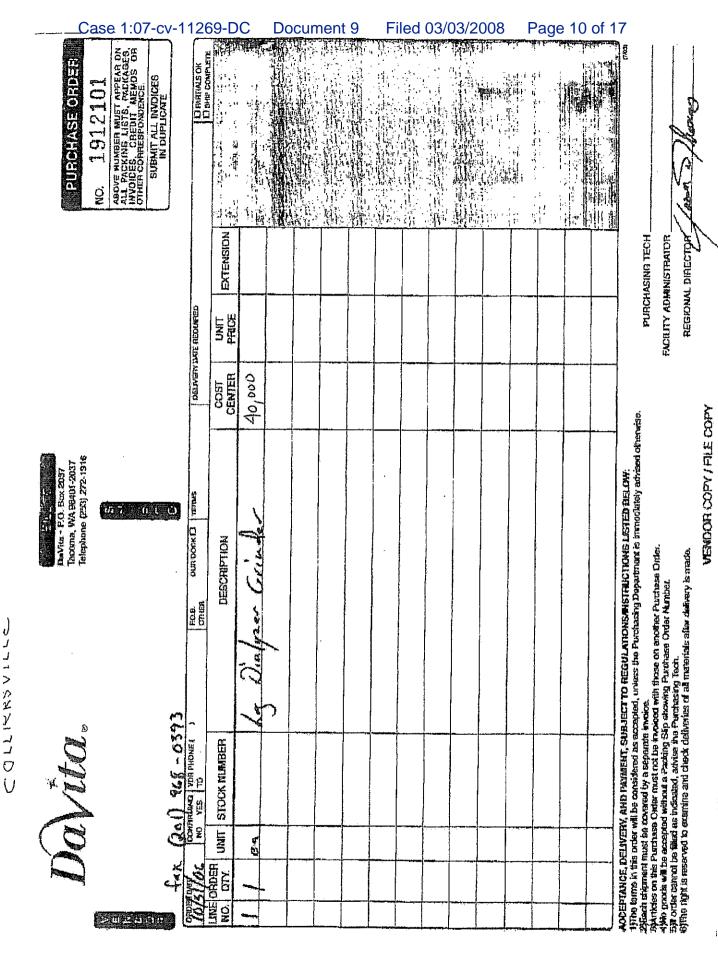
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PURCHASE ORDER

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SUBMIT ALL INVOICES IN OUPLICATE

Clarksville, TN 37040 Jay Ross (770)778-9475

Atm: DaVita Clarksville North Dialysis Center 3071 Olay Lawis Rd

9 X - 1 F 0

Alm: MCM Environmental Technologies, INC One University Plaza, Suite 400 Hackensack, NJ 07601 Attn: Dwight Morgan Fax (800)420-3205

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NO YES (201)342-1222
STOCKHO. DESCRIPTION

TRAIT Z.

6/22/07 GROER DAITE

BILLTO

Facility# 2279 DELINEAY DATE REQUIRED TELLINS OLIR DOCK

PARTIALS OK

8/17/07

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2), Each shipment must he covered by a separate invoice.

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Exhibit 2

GOLDSTAR MEDICAL CORP.

MOGE

56 Pecan Valley Drive New City, NY 10956

Phone: (845) 639-9149 Fax: (845) 639-9110

INVOICE # 013107 DATE: January 30, 2007

Bill To:

Attn: Accounts Payable

MCM ENVIRONMENTAL TECHNOLOGIES, INC.

1 University Plaza, Suite 400 Hackensack, NJ 07601

Comments or special instructions: N/A

ALESPERSON	P.O. NUMBER	SHIP DATE	SHIP VIA	F.O.B. POINT	TERMS
		01-2007			
				· ·	
QUANTITY		DESCRIPTION		UNIT PRICE	TNUOMA

Ship To: N/A

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
2	Senior SteriMed Unit	\$40,000	\$80,000
	- Davita: Lonestar Facility, Houston TX		
	- Davita: Colliersville Facility, Colliersville TN		
1	Junior SteriMed Unit	\$20,000	\$20,000
•	- Davita: Brookhollow Facility, Houston TX		
		Subtotal	\$100,000
		Commission	10%
		TOTAL DUE	\$10,00

Make all checks payable to Goldstar Medical Corp. If you have any questions concerning this invoice, contact Bill Garrett at (845) 639-9149.

THANK YOU FOR YOUR BUSINESS!

Exhibit 3

DAVITA

DIRECT SALES BY MCM ENVIRONMENTAL TECHNOLOGIES, INC.

PO#	Order date	PO Amount	Status	Location Name	State
	Inv. Date 1/30/06	\$22,800	Paid	Crossvile	TN
1826851	12/12/2006	\$40,000	Paid	Lonestar	TX
1903105	11/7/2006	\$20,000	Paid	Brookhollow	TX
1799405	10/27/2006			MedCenter	TX
1912102	10/31/2006	\$40,000		Colliersville	TN
1912102	10/31/2006	(\$40,000)	Cancellled	Colliersville	TN
1772 358		\$40,000		Rock Praire	ΤX
1772 358		(\$40,000)	Cancellled	Rock Praire	TX
PA 9085	10/28/2007	\$27,869	Paid	Dyersburg	TN
1940505	8/17/2007	\$22,000	Paid	Clarksville	TN
		\$132,669			
		\$40,000		MedCenter	TX
		\$40,000		MedCenter	TX
		\$40,000		Omni	TX
		\$40,000		Northstar	TX
		\$40,000		Bryant College Station	TX
		\$20,000		Woodlands	TX
		\$20,000		Mid Cities	TX
		\$40,000		Rock Praire	TX
		\$20,000		First Colony	TX
		\$42,000		Lake Clift	TX
		\$342,000			
		<u>\$474,669</u>			